

### **AMENDMENTS TO THE DRAWINGS**

The attached sheets of drawings include changes to FIGS. 1 and 2. The first sheet, which includes FIG. 1, replaces the original sheet including FIG. 1. In FIG. 1, the reference numbers have been typed. The second sheet, which includes FIG. 2, replaces the original sheet including FIG. 2. In FIG. 2, the reference numbers have been typed. No new matter has been added.

## REMARKS

Reconsideration of the present application as amended and in view of the additional discussion below is respectfully requested.

Claims 1, 4, 5 and 8 have been amended. Claims 1-8 are pending in this application.

Proposed drawing amendments are submitted with this amendment. These drawing amendments are editorial in nature and do not add new matter to the application.

The Office Action of August 24, 2004, included the following issues:

I. Claims 1-3 and 5-6 were rejected under 35 U.S.C. § 102(b) in view of U.S. Patent No. 4,933,526 to Fisher et al.

II. Claims 4 and 8 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,933,526 to Fisher et al. in view of U.S. Patent No. 4,640,838 to Isakson et al.

III. Claims 1-8 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 3,302,632 to Fichtner in view of U.S. Patent No. 3,271,169 to Baker et al. or U.S. Patent No. 6,187,354 to Hopkins.

### **I. 35 U.S.C. § 102(b) Rejection Based On The '526 Patent**

The Office Action of August 24, 2004 rejected claims 1-3 and 5-6 under 35 U.S.C. § 102(b) in view of U.S. Patent No. 4,933,526 to Fisher et al.

It is well settled law that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference in as complete detail as is contained in the claim. Moreover, it is not

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RESPONSE TO OFFICE ACTION

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sufficient that the prior art reference disclose all of the elements in isolation. Rather, “[a]nticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim.” Lindemann Maschinefabrik GmbH v. American Hoist & Derrick Co., 730 F.2d 1452, 221 U.S.P.Q. 481, 485 (Fed. Cir. 1984) (emphasis added). In traversal, the Applicants submit that Fisher et al. does not disclose the invention set forth in the claims.

Fisher et al. teaches a tray with at least one and preferably a plurality of mold cavities (Col. 2, ll. 65-67). The cavities may all be similar, but preferably will vary in geometry to simulate the normal variations and distribution encountered in a naturally occurring finished food items (Col. 3, ll. 3-7). A susceptor material lines at least the cavities of the tray (Col. 3, ll. 14-15). Fisher et al. does disclose the geometry of a cavity or compartment may vary; however, Fisher et al. does not disclose that the *surface* of a cavity or compartment has a *distinct pattern*. There is no teaching in Fisher et al. of a first compartment having a bottom surface defining a first distinct pattern. Further, there is no teaching in Fisher et al. of a second compartment having a bottom surface defining a second distinct pattern. Fisher et al. does not disclose that the first pattern and the second pattern are distinct from each other. Since all the elements of claims 1 and 5 cannot be found in Fisher et al., Fisher et al. cannot be said to anticipate these claims.

For the above-discussed reasons, currently amended independent claims 1 and 5 are not anticipated by Fisher et al. and withdrawal of the rejections based on the same is respectfully requested. Dependent claims 2-3 and 6 are dependent on an independent claim believed to be allowable and for this reason, among others, are also allowable.

## II. 35 U.S.C. § 103 Rejections

The Office Action of August 24, 2004 rejected claims 4 and 8 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,933,526 to Fisher et al. in view of U.S. Patent No. 4,640,838 to Isakson et al.

In traversal, the Applicant submits that a *prima facie* case of obviousness has not been established because there has been shown no proper teaching, suggestion or motivation to modify the cited reference in the manner that has been asserted in the Office Action to be obvious. Moreover, the Applicant submits that, when properly considered, the only suggestion of the presently claimed invention is provided by the present application.

To establish a *prima facie* case of obviousness of a claimed invention, the Patent Office has the initial burden of identifying in the prior art some teaching, suggestion or motivation to modify the cited reference. Furthermore, the prior art must be taken only for what it would teach or suggest to a person of ordinary skill in the art at the time of the invention, without using impermissible hindsight. Moreover, "it is impermissible within the framework of section 103 to pick and choose from any one reference only so much as it will support a given position, to the exclusion of other parts necessary to the full appreciation of what such references fairly suggests to one of ordinary skill in the art." In re Wesslau, 353 F.2d 238, 241 (CCPA 1965).

The cited references fail to disclose or suggest all of the features recited in dependent claims 4 and 8. Fisher et al. discloses a microwave active cover, such as film

16, placed across the top of the tray and contacts the top of the food precursor, so that the top may also be browned and crisped in a microwave oven (Col. 3, ll. 21-25). The cover is provided with a microwave susceptible means and may be adhered or laminated to the mold by use of the optional layer of relatively low melting thermoplastic material or by other adhesive or mechanical means (Col. 5, ll. 43-50). The microwave energy that is absorbed by the tray and the cover heats these surfaces and browns and crisps the contacted surfaces of the food precursor (Col. 5, ll. 63-66). One or more holes in the cover may be provided to permit venting of steam during the cooking process (Col. 5, ll. 50-53). There is no teaching in Fisher et al. of a steam operated vent as recited in the claims of the present invention. To the contrary, Fisher et al. teaches pre-existing holes in a cover that permit steam to vent through during the cooking process.

Isakson et al. discloses a package to which a deposit comprising nonmetallic, microwave-absorbing particles dispersed in a nonmetallic binder, is adhered to the package (Col. 2, ll. 27-31). The package comprises heat-sensitive material such as thermoplastic film and a deposit is adhered to the film. Heating of the particles by microwaves can soften and weaken that portion of the film to which the deposit is adhered, thus venting the package through that portion (Col. 2, ll. 41-47). To ensure reliable venting before a package explodes due to vapor pressure buildup, the deposit preferably has a thickness of at least 20 micrometers and a width of at least 5 mm in all directions (Col. 3, ll. 60-64). There is no teaching in Isakson et al. of a steam operated vent as recited in the claims of the present invention. To the contrary, Isakson et al. teaches a microwaveable vent that is formed by attaching a deposit of particles to film

and heating the particles in the deposit by microwaves to soften and weaken that portion of the film to which the deposit is adhered.

Without the benefit of hindsight gained from viewing the present application, one of ordinary skill in the art at the time of the invention would not have modified the cited references as asserted in the Office Action to arrive at the invention as recited in dependent claims 4 and 8. For this and other reasons, currently amended dependent claims 4 and 8 are patentable over the '526 patent to Fisher et al. in view of the '838 patent to Isakson et al. and withdrawal of the rejection based on the same is respectfully requested.

### **III. 35 U.S.C. § 103 Rejections**

The Office Action of August 24, 2004 rejected claims 1- 8 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 3,302,632 to Fichtner in view of U.S. Patent No. 3,271,169 to Baker et al. or U.S. Patent No. 6,187,354 to Hopkins.

In traversal, the Applicant submits that a *prima facie* case of obviousness has not been established because there has been shown no proper teaching, suggestion or motivation to modify the cited reference in the manner that has been asserted in the Office Action to be obvious. Moreover, the Applicant submits that, when properly considered, the only suggestion of the presently claimed invention is provided by the present application.

To establish *prima facie* obviousness of a claimed invention, the Patent Office has the initial burden of identifying in the prior art some teaching, suggestion or motivation to modify the cited references. Furthermore, the prior art must be taken only for what it

would teach or suggest to a person of ordinary skill in the art at the time of the invention, without using impermissible hindsight. Moreover, “it is impermissible within the framework of section 103 to pick and choose from any one reference only so much as it will support a given position, to the exclusion of other parts necessary to the full appreciation of what such references fairly suggests to one of ordinary skill in the art.’ In re Wesslau, 353 F.2d 238, 241 (CCPA 1965).

The cited references fail to disclose or suggest all of the features recited in independent claims 1 and 5. Fichtner et al. teaches grids 21 and 22 of different mesh incorporated into a base portion 15 of utensil 10 by being *sandwiched between or embedded within* the two nested and adhesively secured together plastic vessels 11 and 12 (Col. 2, ll. 25-28). The shields or grids are constructed of a high conductivity metal which dampens microwaves directed through the utensil (Col. 2, ll. 28-33). The grids 21 and 22 reduce the transmission of microwaves through the vessel walls and hence slow up the cooking process (Col. 2, ll. 33-35). There is no teaching in Fichtner et al. of a bottom *surface* of a first compartment defining a *first pattern* as recited in the claims of the present invention. Further, there is no teaching in Fichtner et al. of a bottom *surface* of a second compartment defining a *second pattern* as recited in the claims of the present invention. There is no teaching in Fichtner et al. of first and second patterns being distinct from each other as recited in the claims of the present invention. To the contrary, Fichtner et al. teaches grids of different mesh sandwiched between or embedded within the two nested plastic vessels. As the Examiner has pointed out in the Office Action of August

24, 2004, there is no teaching in Fichtner et al. of a covering secured to the base and sealing each compartment as recited in the claims of the present invention.

Baker et al. teaches food portions may be located at different distances from the conducting surface 20 (Col. 3, ll. 53-57). The spacing is accomplished through the use of a compartmented dielectric or plastic plate 28 having depending portions forming a base surface in engagement with conductive sheet 20 (Col. 3, ll. 53-61). The heating effect is inversely proportional to the proximity to the conductive sheet (Col. 3, ll. 66-67). There is no teaching in Baker et al. of a bottom *surface* of a first compartment defining a *first pattern* as recited in the claims of the present invention. Further, there is no teaching in Baker et al. of a bottom *surface* of a second compartment defining a *second pattern*. There is no teaching in Baker et al. of first and second patterns being distinct from each other. To the contrary, Baker et al. teaches positioning food portions at different distances from the conducting surface 20. Neither Fichtner et al. nor Baker et al. suggest or disclose or teach these claim elements. Both references are entirely silent as to a bottom *surface* of a first compartment defining a *first pattern* and a bottom *surface* of a second compartment defining a *second pattern*, and the first and second patterns are distinct from each other.

Hopkins teaches a microwave steam tray 1 made of a thermo-formed co-polymer polypropylene quality food grade plastic (Col. 2, ll. 47-49). The microwave steam tray 1 comprises a plastic container having a dish portion 12 and a lid 14 (Col. 2, ll. 50-52). The dish portion 12 includes a bottom surface 16 with four sidewalls 21-24 extending therefrom to define a dish interior 18 (Col. 2, ll. 52-54). A plurality of ribs 20 are raised



from the bottom surface 16 to provide a cooking plane (Col. 2, ll. 54-55). The ribs 20 extend radially from a centrally located circle 17 on the bottom surface 16 (Col. 2, ll. 55-56). The radial orientation of the ribs 20 around the moisture reservoir 40 allows steam emanating from the moisture reservoir 40 to easily travel to and through the steam channels between the ribs and fill the entire steam tray (Col. 3, ll. 57-62). Because steam is easily channeled between the ribs, food placed in the tray is steam cooked from below the cooking plane as well as above the cooking plane (Col. 3, ll. 62-65). There is no teaching in Hopkins of a bottom *surface* of a first compartment defining a *first pattern* and a bottom *surface* of a second compartment defining a *second pattern* as recited in the claims of the present invention. There is no teaching in Hopkins of first and second patterns being distinct from each other. To the contrary, Hopkins teaches only one pattern of ribs 20 extending radially from a centrally located circle 17 on the bottom surface 16 of the tray. Hopkins does not teach a *second distinct pattern* on the bottom surface of a second compartment.

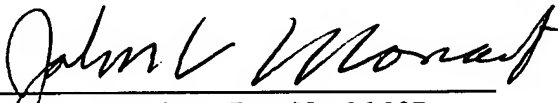
Without the benefit of hindsight gained from viewing the present application, one of ordinary skill in the art at the time of the invention would not have modified the cited references as asserted in the Office Action to arrive at the invention as recited in independent claims 1 and 5. For this and other reasons, the Applicant respectfully submits that currently amended independent claims 1 and 5 are patentable over the '632 patent to Fichtner in view of the '169 patent to Baker et al. or the '354 patent to Hopkins and withdrawal of the rejection based on these references is respectfully requested. Dependent claims 2-4 and 6-8 are dependent on an independent claim believed to be

allowable and for this reason, and for the novel and unobvious elements recited, are also allowable.

It should be understood that the above remarks are not intended to provide an exhaustive basis for patentability or concede the basis for the rejections in the Office Action, but are simply provided to overcome the rejections made in the Office Action in the most expedient fashion.

In view of the above amendments and remarks, it is respectfully submitted that the present application is in condition for allowance and an early notice of allowance is earnestly solicited. If after reviewing this amendment the Examiner feels that any issues remain which must be resolved before the application can be passed to issue, the Examiner is invited to contact the Applicant's undersigned representative by telephone to resolve such issues.

Respectfully submitted

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